a secret trust, which the defendant was willing to carry out; but it was held that the allegations respecting the trust were not proved by the mere answer of the defendant, which was not responsive to the bill, and that the plaintiff must prevail. In *Jamison* v. *Miller*[1] the Court said, referring to this case: "If the fact of a trust be proved by evidence competent to establish it as against the complainant, I see no reason, either in principle or the authorities, to doubt that an answer signed would be a sufficient manifestation of the trust to satisfy the statute, whether responsive to the bill or not."[2] It would seem, therefore, that in *Hutchinson* v. *Tindal*, if the secret trust had been proved by competent evidence, the allegations of the defendant would have been a good defence by way of plea. Therefore, the decision in the case is not consistent with *Gardner* v. *Rowe*.

RECENT CASES.

AGENCY — IMPUTED KNOWLEDGE. — Ship-owners instructed a broker to reinsure an overdue ship, "lost or not lost." The broker, while acting in this behalf, acquired knowledge material to the risk, which he did not communicate to the owners. The latter afterward secured a policy through another agent. The ship had, in fact, been lost some days before the insurance was applied for, but neither the owners nor the last agent knew it. *Held*, that the owners could recover on this policy, the knowledge of the first broker not being attributable to them. *Blackburn* v. *Vigors*, 12 Ap. Cas. 531.

AGENCY — LIABILITY OF PRINCIPAL FOR AGENT'S MISREPRESENTATIONS. — The general superintendent of a company, for the purpose of securing a loan from the defendants on his individual account, represented that he had grain stored in the company's warehouse, when, in fact, he had none. On his giving them a receipt for it in the name of the company, the defendants advanced the money. *Held*, the company is not liable on the receipt. But where the defendants had loaned money on a receipt identical with this one to a third party, the Court held the company liable. *Planters' Rice-Mill Co.* v. *Olmstead*, 3 S.E. Rep. 647 (Ga.).

ATTACHMENT. — Plaintiff conducted a saloon through an agent who had a license in his own name and represented himself as owner. Liquors were attached as the property of the agent. The plaintiff brought an action of replevin, and it was held that where the sale of liquor without a license is illegal, such property is not subject to attachment, because it cannot be sold. *Barron* v. *Arnold*, 11 Atl. Rep. 298 (R.I.).

BILL OF LADING — PERILS OF THE SEA. — Rats gnawed a hole in a pipe connecting the bath-room of a vessel with the sea, and sea-water entered and damaged the cargo. It was held, reversing a decision of the Court of Appeal, that the injury was caused by a peril of the sea, within the exception in the bill of lading, and the carrier was not liable. A peril of the sea is "a sea damage, occurring at sea, and nobody's fault." *Hamilton* v. *Pandorf*, 12 Ap. Cas. 518.

CHECKS — FORGED SIGNATURE. — A forged check was paid by the bank on which it was drawn, and the drawer did not discover the forgery for seventeen days after his book was balanced up and the check returned. He then gave notice to the bank. It was held that it was not too late for him to set up the forgery. The Courts distinguish between checks in which the amount is raised and those in which the signature is forged. A depositor has a complete right to assume that the bank has only paid the checks signed by himself, and is under no obligation to investigate for the benefit of the bank. If he gives notice of a forgery whenever it comes to his notice, it is the most that can be required of him. *Cincinnati National Bank* v. *Creasy*, 18 Weekly Law Bulletin, 410 (Superior Court of Cincinnati).

[1] 27 N.J. Eq. 586, at 593.

[2] See also *Patton* v. *Chamberlain*, 44 Mich. 5.

CONSTITUTIONAL LAW — ACTION AGAINST A STATE. — The State of Virginia put such restrictions upon the method of proving its tax receivable coupons as to impair its contract obligation within Article I., Section 10, of the Constitution. The Act also provided that the State officers should at once bring suit against those tendering coupons without the requisite proof as delinquents. *Held*, that under the eleventh amendment the Circuit Court had no jurisdiction to enjoin the officers from bringing such suit. *Osborn* v. *Bank*, 9 Wheat. 738, see *supra*, p. 223, in which State officers were enjoined from seizing property for taxes in pursuance of a levy under an unconstitutional State law, and *Poindexter* v. *Greenhow*, 114 U.S. 270, in which the treasurer of Virginia was enjoined from collecting taxes by distress after a tender of coupons, were both distinguished on the ground that the defendants were enjoined in those cases as individuals; the State was not a party at all. As individuals they must make out their defence under the law of the United States, and the State statute, being unconstitutional, would not be regarded. In the present case the only party bringing the suit against which an injunction is asked is the State, though of necessity represented by its officers. Harlan, J., dissented, holding that the cases were not distinguishable. Virginia Coupon Case, *Ex parte Ayers*, 8 Sup. Ct. Rep. 164.

CONSTITUTIONAL LAW — PROHIBITORY LIQUOR LAW. — It is within the police power of a State to prohibit the manufacture and sale of intoxicating liquors, and although it results in greatly diminishing the value of property engaged in the business, it is not depriving "any person of life, liberty, or property without due process of law." Mr. Justice Field dissents, on the ground that, conceding the right to stop the use of property for purposes deemed injurious to society, the State has not the right to destroy any property, which might be used for other purposes, without compensation to owners. He thus objects particularly to the clause which gives power "to shut up and abate such place by taking possession thereof and destroying all intoxicating liquors found therein, together with all signs, screens, bars, bottles, glasses, and other property used in keeping and maintaining said nuisance." *Mugler* v. *State*, 36 Alb. L.J. 525 (U.S. Sup. Ct.).

CONSTITUTIONAL LAW — REGISTRATION OF VOTERS. — A law which requires the voter to register on one of four days, the last one being ten days prior to the election, is unconstitutional as hindering the free exercise of suffrage. *State* v. *Conner*, 36 Alb. L.J. 444 (Neb.); 34 N.W. Rep. 499, S.C. See *Kinneen* v. *Wells*, 144 Mass. 497.

CONSTITUTIONAL LAW — VESTED RIGHTS. — An Act of Congress of March 3, 1887, annulled the charter of the Mormon Church which had been granted by the legislative assembly of Utah, dissolved the corporation, and authorized proceedings to wind up its affairs and have certain property declared forfeited to the school-fund of the Territory. A bill was filed under this act, and it was held that a charter from a territorial government gives no vested rights, since it must be deemed to be accepted with knowledge that the United States has authority to change or repeal it. *United States* v. *Church of Jesus Christ of Latter-Day Saints*, 15 Pac. Rep. 473 (Utah).

CONTRACT — CONSIDERATION. — The rule that the acceptance of part payment for a debt is no consideration for the extinguishment of the debt has no application where property instead of money is received. *Hasted* v. *Dodge*, 35 N.W. Rep. 462 (Iowa).

Mutual promises by husband and wife to drop all differences and perform certain duties toward each other are without consideration as being promises to do what they are already bound to do. *Miller* v. *Miller*, 35 N.W. Rep. 464 (Iowa).

CONTRACT — OUSTING THE COURTS OF THEIR JURISDICTION. — One who had undertaken to construct a certain section of a railroad, agreed that the estimates of the work made by the company's engineer should be conclusive against him, "without recourse or appeal." The contractor was dissatisfied, and brought an action. It was held that the stipulation to abide by the estimates of the engineer was not binding even in the absence of fraud or mistake. *Louisville, etc., R. Co.* v. *Donnegan*, 25 Cent. Law Jour. 513 (Ind.).

The case is criticised in a note, and the authorities are examined at considerable length.

DOMICILE — STUDENT'S RIGHT TO VOTE. — A student at college may acquire a legal residence so as to be entitled to vote where the college is located, if he, in good faith, elects to make that his home to the exclusion of all other places; and this though he may intend to leave the place at some fixed time or at some indefinite period in the future. *Pedigo* v. *Grimes*, 13 N.E. Rep. 700 (Ind.).

EQUITY JURISDICTION — FRAUDULENT PROMOTER OF MARRIAGE LIABLE TO ISSUE. — A devised land to B, but if he died without issue to C and his heirs. B conveyed to D. D, becoming alarmed lest B should die without issue, represented to the plaintiff's mother that B had a fine property left to him, which would go to the heir, and thus induced her to marry B. The plaintiff, the sole issue of the marriage, filed a bill against D for a conveyance of the land. *Held*, equity will treat D as a constructive trustee for the plaintiff, and compel him to convey. *Piper* v. *Hoard*, 13 N.E. Rep. 626 (N.Y.), affirming the decision of Supreme Court.

The Court go upon the ground that one who makes a representation as to the estate of the proposed husband, forming an inducement to the marriage, is bound to make it good in the manner represented. The plaintiff, being the issue, is considered to have all the rights of her mother, especially since, if the representation had been true, all the property would have gone to the plaintiff. Upon legal principles the result reached by the Court seems somewhat extraordinary. No authority is cited that in the least sustains the proposition, that D's misrepresentation about his property to the mother made him a constructive trustee for the mother, and so for her heir. Her remedy was at law for deceit. It may be possible to conceive that D's fraud was an equitable tort toward the unborn issue, but the right to the kind of relief here given by no means follows.

EVIDENCE — LETTER-PRESS COPIES. — "Letter-press copies are but copies, and cannot be introduced if the originals be unaccounted for, and it is not shown that they could not have been produced at the trial." *State* v. *Halstead*, 35 N.W. Rep. 457 (Iowa).

EVIDENCE, PAROL. — In an action on a promissory note, evidence that the defendant was not to pay except from sales of a patent washing-machine, and that that machine was so worthless that nothing was realized from such sales, is not admissible. *De Long* v. *Lee*, 34 N.W. Rep. 613 (Iowa). See also *Mason* v. *Mason*, 34 N.W. Rep. 208 (Iowa); *Appeal of Potts*, 10 Atl. Rep. 887 (Pa.); *Merchants' Exch. Bank* v. *Luckow*, 35 N.W. Rep. 434 (Minn.).

EVIDENCE — PERFORMANCE OF A CONTRACT. — Defendant agreed to pay $1,000 for a page advertisement in a certain publication, on a guaranty that 100,000 copies would be mailed. In an action for the money it was proved that the full number of copies was delivered to the Brooklyn post-office, and that postage was paid at second-class rates. But it was also brought out that the publication was not entitled to transmission as second-class matter, and it was decided that performance was not made out, since there is no presumption that matter accepted at a post-office reaches its destination, unless the postal laws are complied with. *Brundage* v. *Sheffield*, 32 Daily Register, 1117 (New York City Court).

EVIDENCE — WITNESS. — On grounds of public policy a wife is not a competent witness for or against her husband in criminal cases in the United States Courts. *United States* v. *Jones*, 32 Fed. Rep. 569.

A note states modifications of this common-law rule, which are recognized in many jurisdictions in this country.

FIXTURES, RIGHT TO REMOVE. — A tenant who accepts a new lease does not thereby lose his right to remove fixtures unless the new lease expressly covers them, thus showing that such was the intention of the parties. *Second Nat. Bank* v. *Merrill*, 34 N.W. Rep. 514 (Wis.). See *contra*, *Loughran* v. *Ross*, 45 N.Y. 792; *Watriss* v. *First Nat. Bank*, 124 Mass. 571.

FRAUD. — A mortgagee was fraudulently induced to assign the mortgage on the supposition that she was merely extending the time. *Held*, that nothing passed by the assignment, even to an innocent holder. *Herchmer* v. *Elliott*, 23 Can. Law Jour. 414 (Ch. D. Can.).

LARCENY — INVITO DOMINO. — The keeper of a betting stand decamped with the money that he had taken in. He was prosecuted for stealing and convicted. A point was reserved as to whether there was any evidence of stealing to go to the jury. The conviction was affirmed, the Court holding that there was evidence of a preconcerted design to get the money by a trick, and, as the owners never intended to part with it except in a certain event which did not happen, the offence was larceny. *Regina* v. *Buckmaster*, 22 Law Jour. 166 (C.C.R.).

MORTGAGE, CHATTEL — RESERVATION BY MORTGAGOR OF RIGHT TO SELL. — The furniture in a hotel was sold and mortgaged back to secure the unpaid purchase-

money. The vendees reserved the right to sell any of this furniture for the purpose of purchasing other and better furniture to put in the hotel. *Held*, that the mortgage was void *ab initio* as to creditors and incumbrancers. *Brasher* v. *Christophe*, 15 Pac. Rep. 403 (Col.).

MORTGAGE, CHATTEL — TITLE TO INCREASE. — Under the Maryland Code a chattel mortgage is good without possession if it is recorded. Such a mortgage was given on "fifteen shoats." Nearly ten years later remote descendants of these shoats were sold under an execution against the mortgagor, who had never given up possession. The mortgagee claimed them against the vendee and succeeded. *Cahoon* v. *Miers*, 11 Atl. Rep. 278 (Md.).

This seems to be logical enough, but it suggests very pointedly the propriety of further legislation if a mortgage of chattels is in any case to be held good against third persons without a change of possession.

PATENT — DRIVEN WELLS. — Section 7 of the Act of March 3, 1839 (5 Stat. 354), has been interpreted as rendering unpatentable any invention publicly used more than two years before a patent is applied for, even though such use be without the knowledge or consent of the inventor. And on this ground the "Driven Well" patent has been overthrown, after withstanding for twenty years persistent attacks in the Circuit and Supreme Courts. See *Eames* v. *Andrews*, 122 U.S. 40; *Andrews* v. *Hovey*, 8 Sup. Court Rep. 101.

PROMISSORY NOTES — BANKRUPTCY OF MAKER AND INDORSER. — The holder of a note received a dividend from the indorser's assignees in bankruptcy, and was then allowed to prove for the whole amount of the note against the bankrupt estate of the maker. He could recover only the balance due. *Southern Michigan Nat. Bank* v. *Byles*, 34 N. W. Rep. 702 (Mich.).

QUASI-CONTRACT — STATUTE OF FRAUDS. — The plaintiff contracted orally with the defendant that the latter should instruct his son in dentistry for two years for a certain consideration. After a few months the boy left defendant, and the plaintiff sues on *quantum meruit*, for his services. *Held*, the contract not complying with the statute of frauds cannot be set up by the defendant as a defence. *Freeman* v. *Foss*, 14 N.E. Rep. 141 (Mass.).

SALOON-KEEPER. — Plaintiff and one F became intoxicated on liquor furnished them by the defendant in his saloon. F pinned a piece of paper on plaintiff's back and set fire to it, and serious injuries resulted. The defendant was held liable. "When one enters a saloon or tavern, opened for the entertainment of the public, the proprietor is bound to see that he is properly protected from the assaults or insults, as well of those who are in his employ as of the drunken and vicious men whom he may choose to harbor." *Rommel* v. *Schambacher*, 5 Lancaster Law Review, 8 (Com. Pleas, Philadelphia Co., Pa.).

TRUSTS, CONSTRUCTIVE — CONFIDENTIAL RELATION. — Plaintiff purchased land of a corporation. The latter was indebted for a part of the purchase-money, and an action was brought to compel payment or a sale of the land. An officer of the corporation assured the plaintiff that his title would be made good. A sale was ordered; this officer became the purchaser, and then refused to confirm the plaintiff's title. *Held*, that as between the parties the title to the property would be treated as in precisely the same situation that it was in when the plaintiff was assured that his rights would be protected. *Allen* v. *Jackson*, 13 N.E. Rep. 840 (Ill.).

Compare *Appeal of McCall*, 11 Atl. Rep. 206 (Pa.); *Jenninas* v. *Langdon*, 11 Atl. Rep. 212 (Pa.), and cases collected in Ames' Cases on Trusts, 291, n.

WILL — EFFECT OF CODICIL. — Chas. O'Conor put a clause in his will releasing all demands against the persons named "in this will." Later he executed a codicil republishing the will with a bequest to the defendant. Nothing was said about releasing any demands against him. The executor now sues for a $50,000 fee of his testator for services in the Tennessee bondholder's case. *Held*, the word "will" did not include the codicil. *Sloane* v. *Stevens*, 25 Cent. L.J. 540 (N.Y.); 13 N.E. Rep. 618, s.c.